

Filed

JAN 27 2015

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JERRY SMITH,

Plaintiff,

v.

R. MILLER, et. al.,

Defendants.

No. C 14-04215 EJD (PR)

ORDER OF DISMISSAL

Plaintiff, a state prisoner at San Quentin State Prison ("SQSP"), filed the instant civil rights action in pro se pursuant to 42 U.S.C. § 1983. Plaintiff's motion for leave to proceed in forma pauperis will be granted in a separate written order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is

1 immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be
 2 liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
 3 1988).

4 In its review, the court must identify any cognizable claims and dismiss any claims
 5 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or
 6 seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §
 7 1915A(b). Failure to state a claim is a grounds for dismissal before service under both
 8 sections 1915A and 1915(e)(2), as well as under Rule 12(b)(6). Dismissal for failure to
 9 state a claim is a ruling on a question of law. See Parks School of Business, Inc., v.
 10 Symington, 51 F.3d 1480, 1483 (9th Cir. 1995). "The issue is not whether plaintiff will
 11 ultimately prevail, but whether he is entitled to offer evidence to support his claim."
 12 Usher v. City of Los Angeles, 828 F.2d 556, 561 (9th Cir. 1987).

13 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
 14 elements: (1) that a right secured by the Constitution or laws of the United States was
 15 violated, and (2) that the alleged violation was committed by a person acting under the
 16 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

17 **B. Plaintiff's Claims**

18 Plaintiff claims that due to Defendants' refusal to provide a combination lock to
 19 secure his property, some of his personal property went missing on January 7, 2013.
 20 (Compl. at 3.) Even if we construe the facts in the light most favorable to Plaintiff and
 21 even if his allegations are proven to be true, Plaintiff fails to state a claim upon which
 22 relief may be granted under § 1983. See West v. Atkins, 487 U.S. at 48. Neither the
 23 negligent nor intentional deprivation of property states a due process claim under § 1983
 24 if the deprivation was random and unauthorized. See Parratt v. Taylor, 451 U.S. 527,
 25 535-44 (1981) (state employee negligently lost prisoner's hobby kit), overruled in part on
 26 other grounds, Daniels v. Williams, 474 U.S. 327, 330-31 (1986); Hudson v. Palmer, 468
 27 U.S. 517, 533 (1984) (intentional destruction of inmate's property). The availability of an
 28 adequate state post-deprivation remedy, e.g., a state tort action, precludes relief because it

1 provides sufficient procedural due process. See Zinerman v. Burch, 494 U.S. 113, 128
2 (1990) (where state cannot foresee, and therefore provide meaningful hearing prior to,
3 deprivation statutory provision for post-deprivation hearing or common law tort remedy
4 for erroneous deprivation satisfies due process); King v. Massarweh, 782 F.2d 825, 826
5 (9th Cir. 1986) (same). California law provides such an adequate post-deprivation
6 remedy. See Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994) (citing Cal. Gov't
7 Code §§ 810-895). Therefore, Plaintiff's claim must be dismissed for failure to state a
8 claim upon which relief may be granted.

CONCLUSION

11 For the reasons stated above, this action is DISMISSED for failure to state a claim
12 upon which relief may be granted. See 28 U.S.C. § 1915A(b).

13 The Clerk shall terminate any pending motions and close the file.

14
15 DATED: 1/26/15



EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JERRY SMITH,

Plaintiff,

v.

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Defendants.

Case Number: CV14-04215 EJD

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 1/27/15, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jerry Smith H44485
San Quentin State Prison
San Quentin, CA 94974

Dated: 1/27/15

Richard W. Wierking, Clerk
By: Elizabeth Garcia, Deputy Clerk